



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

DR ANDRE BRYLOWSKI, MD  
12300 FOD ROAD, STE 150  
DALLAS, TX 75234

#### **Respondent Name**

CITY OF SAN ANTONIO

#### **MFDR Tracking Number**

M4-12-2780-01

#### **Carrier's Austin Representative Box**

Box Number 19

#### **MFDR Date Received**

April 30, 2012

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "Payment for this examination was denied based on missing proof of timely filing. Please note on the DWC32 received by our office the carrier listed for this claim was Sedgwick CMS and the adjuster on the file at the time was Martha Bolanos...our office submitted the medical bill along with all supporting documentation to the fax number listed on the DWC 32 (210-332-1579) and received a confirmation that all 28 pages (including the fax cover sheet) were successfully submitted on October 21, 2011. On December 9, 2011, a message was left for the adjuster regarding bill payment status; no return phone call was received. On January 5, 2012 an email was sent to the adjuster regarding payment status and no response was received. The same message was forwarded January 10, 2012. On January 12<sup>th</sup> both messages were deleted without being read (documentation provided for reference). Our Office then submitted the bill a second time via certified mail and provided Sedgwick CMS (which included proof of timely filing) on January 10, 2012. On February 24, 2012 our office again contacted the adjuster Martha Bolanos as no response from the carrier had been received regarding the submitted bill and at that time we were informed Sedgwick CMS was no longer the carrier for this claim and we should contact Tristar as they were the new carrier (please note our office has never received any written notice of the change in carriers)."

**Amount in Dispute:** \$2,997.65

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** The respondent did not submit a response.

**Response Submitted by:** N/A

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 13, 2011	99456-W5-WP, 99456-W8-RE, 96118, G0434	\$2,997.65	\$2,978.10

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

## **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for health care providers to pursue a medical fee dispute.
2. 28 Texas Administrative Code §134.204 sets out the fee guidelines for the reimbursement of workers' compensation specific services provided on or after March 1, 2008.
3. 28 Texas Administrative Code §133.20 sets out the procedures for health care providers to submit workers' compensation medical bills for reimbursement.
4. 28 Texas Administrative Code §102.4 sets out the rules for non-Commission communications.
5. Texas Labor Code §408.027 sets out the rules for timely submission of a claim by a health care provider.
6. Texas Labor Code §408.0272 sets out the rules for certain exceptions for untimely submission of a claim by a health care provider.
7. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated March 16, 2012

- 29E- The time limit for filing has expired. \*Claim is to be submitted no later than the 95<sup>th</sup> day after the date on which the health care services are provided.

Explanation of benefits dated April 3, 2012

- 193G-Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly. \*Medical records were not submitted with reconsideration request.

## **Issues**

1. Did the requestor submit the medical bill for the services in dispute timely and in accordance with 28 Texas Administrative Code §133.20?
2. Did the requestor submit documentation to support the disputed bills were submitted timely in accordance with Texas Labor Code, Section §408.027 and 28 Texas Administrative Code §102.4?
3. Is the requestor entitled to reimbursement?

## **Findings**

1. 28 Texas Administrative Code §133.20(b) states, in pertinent part, that, except as provided in Texas Labor Code §408.0272, "a health care provider shall not submit a medical bill later than the 95<sup>th</sup> day after the date the services are provided." Review of the requestor's 'documentation finds a copy of a Request for Designated Doctor Examination form (DWC 32), requested by the insurance carrier. According to the part III of the DWC 32, the insurance carrier is listed as Sedgwick CMS. Included on the DWC32 is the name, phone number, mailing address, and email address for the adjustor, Martha Bolanos. The requestor also submitted a copy of a fax transmittal report which supports that the requestor submitted a bill along with medical records for the disputed services on October 21, 2011 to the respondent at the fax number provided on the DWC 32. Therefore, the documentation submitted meets the exceptions described in Texas Labor Code §408.0272(b)(1)(C) which states, in pertinent part, that, "a health care provider who fails to timely submit a claim for payment to the insurance carrier under Section 408.027(a) does not forfeit the provider's right to reimbursement for that claim for payment solely for failure to submit a timely claim if: (1) the provider submits proof satisfactory to the commissioner that the provider, within the period prescribed by Section 408.027 (a), erroneously filed for reimbursement with: (C) a workers' compensation insurance carrier other than the insurance carrier liable for the payment of benefits under this title." For this reason the requestor was required to submit a bill to the correct workers' compensation insurance carrier with 95 days after the date the provider was notified of their erroneous submission of the claim in accordance with Texas Labor Code §408.0272(c).
2. Texas Labor Code §408.027(a) states, in pertinent part, that "Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment." 28 Texas Administrative Code §102.4(h) states that "Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on: (1) the date received, if sent by fax, personal delivery, or electronic transmission or, (2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday." Further review of the requestor's documentation finds email confirmation reports of attempts made by the requestor to obtain payment status via e-mail. The report indicates that the e-mails were deleted without being read by the adjustor, Martha Bolanos. It was not until the email attempts were unanswered, that the requestor resubmitted bill to Sedgwick CMS via certified USPS and was delivered January 17<sup>th</sup>, 2012. On February 24, 2012, the requestor was informed through a telephone conversation with adjustor, Martha Bolanos that Sedgwick was no longer handling claim for the employer and that the new insurance carrier was Tristar Risk

Management. The requestor submitted a fax confirmation report dated, February 28, 2012, which supports that a medical bill was submitted to the correct insurance carrier within 95 days from the date the requestor was notified of their erroneous submission in accordance with Texas Labor Code §408.0272. Therefore, reimbursement is recommended.

3. Per Texas Administrative Code §134.204 reimbursement is as follows:

CPT code 99456-W5-WP: \$350.00 recommended for the billing and reimbursement of a MMI evaluation per Texas Administrative Code §134.204 (j)(3)(C).

CPT code 99456-W5-WP: \$300(first musculoskeletal body area) + \$300 (\$150 x 1 additional musculoskeletal body areas and 1 non musculoskeletal body area) = \$600 is recommended for the billing and reimbursement of full physical evaluation, with range of motion testing of the cervical/thoracic, lumbar spine and neurological exam per Texas Administrative Code §134.204 (j)(3)(C)(ii)(II)(iii) and Texas Administrative Code §134.204 (j)(3)(D)(v) .

CPT code 99456-W8-RE: \$500 recommended for the billing and reimbursement of a Return to Work examination per Texas Administrative Code §134.204 (i) & (k)

CPT code 96118: Reimbursement is recommended in the amount of \$1,528.50 (54.54 WC CF/33.9764 Medicare CF x 95.22 Participating amount x 10 units). The requestor is seeking \$1,528.10. This amount is recommended.

CPT code G0434: 28 Texas Administrative Code §134.204(j)(1)(A-E) states in pertinent part, Reimbursement for the MMI/IR exams includes the following components: The medical examination; consultation with injured worker; Review of medical records and films; the preparation of reports, calculation tables, figures, and worksheets; and tests used to assign the IR, as outlined in the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides), as stated in the Act and Division rules in Chapter 130 of this title. Therefore, in accordance with 28 Texas Administrative Code §134.204(j)(1)(A-E), CPT code G0434-Drug screen, is included in the reimbursement for the MMI/IR exam and is not separately payable . No reimbursement is recommended.

### **Conclusion**

For the reasons stated above, the division finds that the requestor has not established that reimbursement is due. As a result, the amount ordered is \$2,978.10.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$2,978.10 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

06/18/2012  
\_\_\_\_\_  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**